

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

In re: § Chapter 11
A'GACI, L.L.C., § Case No. 19-51919
Debtor. §
§

**DEBTOR'S EMERGENCY MOTION FOR AN ORDER ENFORCING
THE AUTOMATIC STAY**

A'GACI, L.L.C. ("A'GACI" or the "Debtor"), debtor-in-possession in the above-referenced chapter 11 case, files this *Debtor's Emergency Motion for an Order Enforcing the Automatic Stay* (the "Motion") and in support thereof, respectfully states as follows:

Jurisdiction and Venue

1. The United States District Court for the Western District of Texas (the "District Court") has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. § 1334. The District Court's jurisdiction has been referred to this Court pursuant to 28 U.S.C. § 157 and the District Court's *Order of Reference of Bankruptcy Cases and Proceedings* dated October 4, 2013. This is a core matter pursuant to 28 U.S.C. §157(b), which may be heard and finally determined by this Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On August 7, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Bankruptcy Code, which commenced the above captioned case (the "Chapter 11 Case"). The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. An official committee of unsecured creditors has yet to be appointed in this Chapter 11 Case. Further, no trustee or examiner has been requested or appointed in this Chapter 11 Case.

4. As of the Petition Date, the Debtor operated 54 retail stores, not including two stores in Puerto Rico that remain closed as a result of hurricanes during 2017. The Debtor's stores are located in fashion retail venues predominately in Texas, Florida, California, and Illinois. The Debtor's corporate office is located in San Antonio, Texas. In addition, the Debtor has its distribution center in San Antonio, Texas (the "Distribution Center").

5. Prior to the Petition Date, the Debtor granted first-priority security interests in and liens on substantially all of the assets of the Debtor, including, without limitation, accounts, inventory, equipment and general intangibles to Second Avenue Capital Partners, LLC ("Secured Creditor").

6. On July 26, 2019, the Debtor entered into a Consulting Agreement with SB360 Capital Partners, LLC and Hilco Merchant Resources, LLC (together, the "Consultant") under which Consultant is providing consulting services with respect to the disposition of the Debtor's merchandise and FF&E ("Inventory") at all of its stores and Distribution Center. Pursuant to the Consulting Agreement, the sales of the Inventory were to take place from August 1, 2019 through August 31, 2019.

7. On July 31, 2019, certain landlords ("Landlords") changed the locks on twelve of the Debtor's store locations based on provisions in their respective leases including the Debtor's failure to pay rent. All of the notices to the Debtor contained a ten-day grace period for payment before termination of the leases ("Leases"). The notices all specifically state "If rents and charges are not paid in full within ten (10) days, Tenant relinquishes possession of the premises." Attached

hereto as **Exhibit A** is a list of the locked store locations and respective landlords ("Locked Stores").

8. The Consulting Agreement includes disposition of the Inventory located at the Locked Stores.

Relief Requested

9. By this Motion, the Debtor seeks an Order under Bankruptcy Code § 362(a) enforcing the automatic stay against the Landlords' actions and compelling the Landlords to provide access to the store premises and the Debtor's merchandise.

Basis for Relief Requested

10. Section 362(a) operates to stay, among other things, all actions "to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under the title." 11 U.S.C. § 362(a)(6). The automatic stay also prohibits "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3).

11. As a result of the commencement of this case, and by operation of law pursuant to § 362 of the Bankruptcy Code, the automatic stay enjoins all persons from, among other things, taking any action to obtain possession of property of the estate or to exercise control over property of the estate. The injunction contained in § 362 of the Bankruptcy Code constitutes a fundamental protection for debtors, which, in combination with other provisions of the Bankruptcy Code, provides these Debtors with a "breathing spell from [their] creditors" that is essential to the Debtors' ability to reorganize successfully. See e.g., *Browning v. Navarro*, 743 F.2d 1069, 1083 (5th Cir. 1984) (citations omitted).

12. Section 365 applies to leases of commercial property that are unexpired on the petition date. 11 U.S.C. § 365.

13. With limited exceptions, a debtor's estate is comprised of all legal or equitable interests in property as of the commencement of the bankruptcy case. See 11 U.S.C. § 541(a). See also *Safeway Managing Gen. Agency, Inc. v. Osherow (In re Davis)*, 253 F.3d 807, 810 (5th Cir. 2001).

14. The Inventory is property of this Debtor's estate. The Inventory is subject to security interests held by the Secured Creditor.

15. The Debtor's interests in the unexpired Leases are property of this Debtor's estate.

16. The Landlords are violating the automatic stay by, among other things, exercising control over the Inventory and the Lease premises. There is a material risk of a loss in the value of the Debtor's assets if the Debtor does not gain immediate access to the Locked Stores.

17. Accordingly, this Court should order that the Landlords shall unlock the Locked Stores and provide the Debtor access to the premises of the Locked Stores and the Debtor's Inventory.

Request for Waiver of Stay

18. To the extent that the relief sought in the Motion constitutes a use of property under Bankruptcy Code § 363(b), the Debtor seeks a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtor requests that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtor to be able to continue to operate its businesses and preserve the value of the estate.

Notice

19. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) the Debtor's secured creditors; (iii) any party whose interests are directly affected by this specific pleading; (iv) those persons who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rules 2002 and 3017; (v) counsel for and the members of any official committees appointed by this Court; (vi) the 20 largest unsecured creditors of the Debtor; (vii) all governmental agencies having a regulatory or statutory interest in this case; and (viii) all landlords.

WHEREFORE the Debtor respectfully requests that the Court (i) grant the Motion and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 7th day of August, 2019.

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/s/ Eric B. Terry
Eric B. Terry, State Bar No. 00794729

PROPOSED ATTORNEYS FOR DEBTOR

store #	STR	LOCATION	LANDLORD
112	L11	Ingram	Mall at Ingram Park, LLC
199	GAL	Houston Galleria	HG Galleria, LLC
201	SAM	San Marcos Outlet	San Marcos Premium Outlets, LP
202	RIO	Rio Grande Outlet	Rio Grande Valley Premium Outlets
220	KTY	Katy Mills	Mall at Katy Mills, LP
222	MID	Midland	Midland Park Mall, LP
223	DOM	The Domain	The Domain Mall II, LLC
224	CLV	Cielo Vista	Simon Prop.Grp.(TX) LP
225	BTC	Barton Creek	Simon Prop.Grp.(TX) LP
227	LPZ	La Plaza	Simon Prop.Grp.(TX) LP
246	BWY	Broadway Sqr	Simon Prop.Grp.(TX) LP
266	LKL	Lakeline	Lakeline Developers

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In re: § Chapter 11
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**ORDER GRANTING DEBTOR'S EMERGENCY MOTION FOR AN ORDER
ENFORCING THE AUTOMATIC STAY**

Upon *Debtor's Emergency Motion for an Order Enforcing the Automatic Stay* (the “Motion”)¹ filed by A'GACI, L.L.C. (“A'GACI” or the “Debtor”); and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

that venue of this proceeding and the Motion in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interest of the Debtor's estate, its creditors, and other parties-in-interest; and the Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed and considered the Motion and the First Day Declaration, and the Court having heard the statements in support of the relief requested in the Motion at the hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, it is HEREBY ORDERED:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to Bankruptcy Code § 362(a), the Landlords (as defined in the Motion) are hereby ordered to unlock the Locked Stores and provide the Debtor access to the premises of the Locked Stores and the Debtor's Inventory.
3. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtor, a waiver of the Debtor's rights to subsequently dispute such claim or the assumption or adoption of any agreement, contract or lease under Bankruptcy Code § 365.
4. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

5. The Debtor is authorized to take all actions necessary to effect the relief granted pursuant to this Order in accordance with the Motion.

6. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

7. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

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Submitted by:

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PROPOSED ATTORNEYS FOR DEBTOR